

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 NANCY CROSS,) No. C 11-3304 LHK (PR)
11 Petitioner,) ORDER OF DISMISSAL
12 v.)
13)
14 KEITH FUDENNA, et al.,)
15 Respondents.)
16 _____)

17 Petitioner, a state prisoner proceeding *pro se*, seeks a writ of habeas corpus pursuant to
18 28 U.S.C. § 2254 challenging a 2004 conviction and sentence. Petitioner has paid the filing fee.
19 For the reasons stated below, the Court DISMISSES the petition for lack of jurisdiction.

20 **DISCUSSION**

21 A. Standard of Review

22 This Court may entertain a petition for writ of habeas corpus “in behalf of a person in
23 custody pursuant to the judgment of a state court only on the ground that he is in custody in
24 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); *Rose*
25 *v. Hodges*, 423 U.S. 19, 21 (1975).

26 A district court shall “award the writ or issue an order directing the respondent to show
27 cause why the writ should not be granted, unless it appears from the application that the
28 applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

1 B. Analysis

2 The federal writ of habeas corpus is only available to persons “in custody” at the time the
3 petition is filed. *See* 28 U.S.C. §§ 2241(c), 2254(a); *Carafas v. LaVallee*, 391 U.S. 234, 238
4 (1968). This requirement is jurisdictional. *See id.* A habeas petitioner must be in custody for
5 the conviction or sentence under attack at the time the petition is filed. *See Maleng v. Cook*, 490
6 U.S. 488, 490-91 (1989). A petitioner who files a habeas petition after she has fully served her
7 sentence, and who is not subject to court supervision is not “in custody” for the purposes of this
8 Court’s subject matter jurisdiction, and her petition is thus properly denied. *See De Long v.*
9 *Hennessey*, 912 F.2d 1144, 1146 (9th Cir. 1990).

10 In this federal habeas petition, Petitioner attacks her 2004 state court conviction.
11 (Petition at 2.) Petitioner indicates that she is not currently in custody or on probation. (*Id.*) She
12 states that she received a three-year sentence in November 2004, plus a three-year term of
13 probation as a result of his 2004 state court conviction. (*Id.*) As she concedes that she has been
14 released from incarceration, and is currently not subject to probation, she is no longer in custody,
15 and cannot seek federal habeas relief from that conviction.

16 **CONCLUSION**

17 Accordingly, this case is DISMISSED. The Clerk shall close the file and enter judgment
18 in this matter.

19 A certificate of appealability will not issue. Reasonable jurists would not “find the
20 district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*,
21 529 U.S. 473, 484 (2000). Petitioner may seek a certificate of appealability from the Court of
22 Appeal.

23 IT IS SO ORDERED.

24 DATED: 7/29/11


25 LUCY H. KOH
United States District Judge